

Lessors of tangible personal property under true leases in Illinois are deemed end users of the property to be leased. See 86 Ill. Adm. Code 130.220. (This is a GIL).

January 25, 2000

Dear Xxxxx:

This letter is in response to your letter dated November 29, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

Please respond in writing as to the proper sales/use tax treatment to be followed when COMPANY assigns true lease transactions of registered motor vehicles to 3<sup>rd</sup> parties, (leasing companies authorized to do business in your state).

COMPANY is an equipment lessor registered to do business in all 50 states. In addition, we are registered as a motor vehicle lessor (if special registration is required) and may enter into long term leases, at least 12 months, of registered motor vehicles. The leases could be true leases, (with FMV or non-nominal purchase options), or conditional sales contracts (with \$1 purchase options). All necessary sales/use tax was paid upfront at lease inception.

Although the underlying lease/conditional sale agreement provides COMPANY with 'legal' title, the physical title document may show COMPANY as owner or it may show COMPANY as lien holder. This determination is made on a lease by lease basis, depending upon the lessee's practice and the state in which the vehicles are titled and/or registered and/or garaged. In addition, the registration of the vehicle usually shows only the lessee's name.

As part of the assignment document, 'legal' title will be transferred from COMPANY to the 3<sup>rd</sup> party leasing company. The 3<sup>rd</sup> party will not enter into a new lease/conditional sale agreement with the lessee. The same agreement used between COMPANY and Lessee remains in place. The 3<sup>rd</sup> party simply steps into our shoes and continues leasing to the same end user, Lessee.

**(Please answer each question for true leases and conditional sales contracts)**

**Question 1:** Does a sales and/or use tax liability result from the transfer of 'legal' title and continued leasing via the assignment document when **no change is made to the physical title document nor to the registration document?** If yes, what is the timing of the liability?

**Question 2:** Does a sales and/or use tax liability result from the transfer of 'legal' title and continued leasing via the assignment document when **a change is made to the physical title document but not to the registration document?** If yes, what is the timing of the liability?

**Question 3:** Does a sales and/or use tax liability result from the transfer of 'legal' title and continued leasing via the assignment document when **no change is made to the physical title document but a change is made to the registration document?** If yes, what is the timing of the liability?

**Question 4:** Does a sales and/or use tax liability result from the transfer of 'legal' title and continued leasing via the assignment document when **no change is made to the physical title document nor to the registration document?** If yes, what is the timing of the liability?

**Additional Questions:**

**(A)** Does the answer to any of these questions change if the vehicle is **titled out of state but registered and primarily garaged in your state?**

**(B)** Does the answer to any of these questions change if the vehicle is **titled and registered out of state but primarily garaged in your state?**

**(C)** Does the answer to any of these questions change if the vehicle is **titled and registered in your state but primarily garaged out of state?**

**(D)** If a vehicle is garaged in your state, are there any requirements for it to be registered and/or titled in your state?

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Thank you for your prompt attention to this matter. If you have any questions or need additional information, I can be reached at #####.

The Retailers' Occupation Tax Act imposes a tax upon persons engaged in the business of selling at retail tangible personal property. 35 ILCS 120/2 (1998 State Bar Edition). The Use Tax Act imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer. 35 ILCS 105/3 (1998 State Bar Edition). "Use" means the exercise by any person of any right or power over tangible personal property incident to the ownership of that property. See 86 Ill. Adm. Code 150.201.

For vehicles purchased from out-of-State retailers, Section 10 of the Use Tax Act, 35 ILCS 105/10 (1998 State Bar Edition), provides that a purchaser of a motor vehicle from an out-of-State retailer shall file a return (Form RUT-25, Motor Vehicle Use Tax Return) with the Department and remit the proper amount of tax due on the selling price of the motor vehicle within 30 days after such motor vehicle is brought into this State for use. Illinois will give a credit for taxes properly due and paid in another state. See 86 Ill. Adm. Code 150.310, enclosed. Depreciation is also allowed for out-of-State use. See 86 Ill. Adm. Code 150.105, enclosed. Use Tax must be paid prior to titling and registering vehicles in Illinois or the vehicles are not allowed to be titled and registered.

Where a business that is not operated in Illinois, but which does operate in another state, is moved to Illinois or opens up an office, plant or other business facility in Illinois, such business shall not be taxed on its use, in Illinois, of used tangible personal property which such business bought outside Illinois and used outside Illinois in the operation of such business for at least 3 months before moving such used property to Illinois for use here. See 86 Ill. Adm. Code 150.315.

Please note that the State of Illinois taxes leases differently for Retailers' Occupation Tax and Use Tax purposes than the majority of other states. For Illinois sales tax purposes, there are two types of leasing situations: conditional sales and true leases.

A conditional sale is usually characterized by a nominal or one dollar purchase option at the close of the lease term. Stated otherwise, if lessors are guaranteed at the time of the lease that the leased property will be sold, this transaction is considered to be a conditional sale at the outset of the transaction, thus making all receipts subject to Retailers' Occupation Tax.

A true lease generally has no buy out provision at the close of the lease. If a buy out provision does exist, it must be a fair market value buy out option in order to maintain the character of the true lease. Lessors of tangible personal property under true leases in Illinois are deemed end users of the property to be leased. See the enclosed copy of 86 Ill. Adm. Code 130.220. As end users of tangible personal property located in Illinois, lessors owe Use Tax on their cost price of such property. The State of Illinois imposes no tax on rental receipts. Consequently, lessees incur no tax liability.

The above guidelines are applicable to all true leases of tangible personal property in Illinois except for automobiles leased under terms of one year or less, which are subject to the Automobile Renting Occupation and Use Tax found at 35 ILCS 155/1 et seq.

As stated above, in the case of a true lease, the lessors of the property being used in Illinois would be the parties with Use Tax obligations. The lessors would either pay their suppliers, if their suppliers were registered to collect Use Tax, or would self-assess and remit the tax to the Department. If the lessors already paid taxes in another state with respect to the acquisition of the tangible personal property, they would be exempt from Use Tax to the extent of the amount of such tax properly due and paid in such other state. See 86 Ill. Adm. Code 150.310(a)(3) enclosed. Under Illinois law, lessors may not "pass through" their tax obligation on to the lessees as taxes. However, lessors and lessees may make private contractual arrangements for a reimbursement of the tax to be paid by the lessees.

In transactions where motor vehicle lessors sell both the lease and the motor vehicle, the lessors will be liable for Retailers' Occupation Tax. Section 1c of the Retailers' Occupation Tax Act, 35 ILCS 120/1c, states as follows:

"A person who is engaged in the business of leasing or renting motor vehicles to others and who, in connection with such business sells any used motor vehicle to a purchaser for his use and not for the purpose of resale, is a retailer engaged in the business of selling tangible personal property at retail under this Act to the extent of the value of the vehicle sold. For the purpose of this Section "motor vehicle" has the meaning prescribed in Section 1-157 of The Illinois Vehicle Code, as now or hereafter amended. (Nothing provided herein shall affect liability incurred under this Act because of the sale at retail of such motor vehicles to a lessor.)"

For your information, please refer to the enclosed a copy of 86 Ill. Adm. Code 130.220 which is the Department's regulation governing, in part, sales of tangible personal property encumbered by leases. It may prove helpful in regards to the valuation of the sale of intangible property transferred in a sale of tangible personal property.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis  
Associate Counsel

MAJ:msk  
Enc.